6.13 HANDLING STAFF GRIEVANCES – GUIDELINES FOR SUPERVISORS

INTRODUCTION
Staff grievances occur in every workplace and handling them properly is important for maintaining a harmonious and productive work environment. The aim of these guidelines is to assist you to deal with grievances so that small issues or problems do not escalate and to ensure that UTS's principles for handling staff grievances (such as procedural fairness, confidentiality, timeliness etc) are followed.

The principles and process for handling work-related grievances are laid out the University's Handling Staff Grievances policy. A copy of the policy can be found at www.hru.uts.edu.au/manual/index.html. Hard copies of the policy can be obtained from the Human Resources Unit.

Disputes in relation to the interpretation, application or operation of a provision of an industrial agreement (ie collective agreement or Australian Workplace Agreement) are handled in accordance with the dispute resolution procedure of the relevant agreement.

WHAT IS A GRIEVANCE?
These guidelines cover work-related grievances. These are any type of problem, concern or complaint where a staff member believes he/she has received unreasonable treatment from the University, another staff member/s or student/s, wishes to bring the grievance to the University's attention and requires an action or response. A statement of concern becomes a grievance when it is reported to a person in authority at UTS, and requires action or response under UTS policies and procedures. General feedback and comments about administration, programs and services would not normally be viewed as a grievance unless specific action was requested.

WHO IS ACCOUNTABLE FOR HANDLING STAFF GRIEVANCES?
Supervisors and managers are responsible for responding appropriately to grievances and managing the process according to these guidelines as well as other UTS policies, directives, procedures and industrial agreements. In addition, staff in the specialist units of Equity and Diversity, Planning and Quality and Human Resources are accountable for handling staff grievances which may be brought directly to them by a staff member and for advising supervisors and managers on how to handle grievances.

As a supervisor or manager, it is your responsibility to seek advice from these specialist units in the following instances:

> for equity-related grievances (see definition page 5), from the Equity and Diversity Unit
> for grievances involving alleged corruption, maladministration or serious waste, from the Director, Internal Audit (refer Reporting Corruption, Maladministration and Serious Waste policy and guidelines)

for grievances other than those mentioned above and/or which may result in disciplinary action being taken against a staff member, from the Human Resources Unit.
WHAT DO I DO WHEN A STAFF MEMBER RAISES A GRIEVANCE WITH ME?
You should always respond seriously to a staff grievance, and in a manner which respects the confidentiality of all parties. You should endeavour to resolve it promptly, with a minimum of stress to all parties, and follow the principles of procedural fairness. It is important that those involved with the grievance are clear about the resolution process and your role in handling the grievance, ie you will not 'side' with any party involved or undertake an advocacy role.

Wherever possible, you should seek and consider the staff member's wishes about preferred resolution processes. However, there may be instances where a grievance is of such a serious nature that formal action is required regardless of the staff member's wishes, eg when a grievance that relates to allegations of corruption, or when the University's duty of care may be compromised if no action is taken, eg complaints alleging unlawful behaviour, complaints relating to reportable conduct or allegations involving children or young persons (those under 18 years of age).

You should:

> listen and respond sensitively to any distress exhibited by the staff member
> encourage the staff member to raise the issue directly with the person concerned if the grievance involves another staff member or work area
> ask the staff member what other advice or resolution avenue/s they have already explored
> clarify what, if any, action the staff member is requesting, outline the likely process if the grievance proceeds, give a copy of the policy and guidelines on the handling of staff grievances to the staff member and inform the staff member that they may, if they choose, request support from a representative of their choice
> advise the staff member that any allegations in writing will be made available to all parties against whom the allegations are made and that in the interest of procedural fairness (refer to the section below on procedural fairness) they will have to be willing to be identified unless the allegations relate to corruption, maladministration and serious waste or child abuse
> be aware of the limits of your own authority, and refer the grievance to a more senior manager if appropriate; inform your supervisor of the grievance and proposed course of action where appropriate
> seek advice from one of the University's specialist units where the grievance relates to their area/s of expertise to ensure that legislative and policy requirements are being met (refer to "Who is accountable for handling staff grievances?" above)
> be aware of the staff member's potential concern as to the possible repercussions of raising a grievance; take all possible steps to ensure that no victimisation occurs as a result of the grievance being raised
> ensure effective, sensitive and confidential communication between all involved.

WHEN SHOULD A GRIEVANCE BE IN WRITING?
Where a grievance relates to potentially unlawful behaviour, eg illegal discrimination or harassment, or may result in disciplinary action against another party, or where the initial inquiries have indicated that the facts of the matter are in dispute, the staff member should be requested to raise the grievance in writing. If the staff member is unable to put the grievance in writing (for reasons such as difficulty with English) you should document the grievance. You should advise the staff member that in the interest of procedural fairness any written allegations involving another person will be provided to that person unless the grievance relates to alleged corruption, maladministration and serious waste or child abuse, where legislation provides otherwise.
WHAT IS THE APPROPRIATE TIMEFRAME TO RESPOND TO A STAFF GRIEVANCE?
All grievances should be dealt with in a timely manner. This includes timely communication with any relevant parties to the complaint. Undue delay in responding to a grievance may provide grounds for further complaint, either on the part of the grievant or other people involved.

The normal process for handling staff grievances is set out in the University’s Handling Staff Grievances policy. The process is summarised below but it is important that you read the policy in full rather than rely on the summary:

(a) The matter in dispute will first be discussed between the grievant(s) and the relevant supervisor within ten working days of notification. If the matter remains unresolved, or suitable arrangements for a meeting have not been made within the timeframe, then the procedure in (b) will be followed.

(b) The matter will be discussed between the grievant(s) and the Dean or Director of the organisational unit, within ten working days of the meeting being requested. If the matter remains unresolved, or suitable arrangements for a meeting have not been made within the timeframe, then the procedure in 11.2(c) will be followed.

(c) At any stage of this process, the grievant(s) may, if they choose, be represented or assisted by a person of their choice.

(d) At any stage of this process, at the request of the supervisor, Dean or Director or the staff member(s) concerned, a representative of the Human Resources Unit or other specialist grievance handling area may attend meetings.

The above process and timelines will not apply to grievances involving alleged corruption, maladministration and serious waste or child abuse where legislation provides otherwise. However, where a grievance, after initial investigation for alleged corruption, maladministration and serious waste or child abuse, does not fall under the legislation, then the process and timelines apply.

HOW DO I ENSURE THAT THE GRIEVANCE IS HANDLED FAIRLY FOR EVERYONE INVOLVED?

Procedural fairness
Procedural fairness must be observed in all aspects of the grievance handling process.

In practice procedural fairness involves:

> ensuring that there is proper investigation of the facts
> relevant parties to the grievance are informed of any allegations made against them, as appropriate. If the allegations have been made in writing, a copy will be given to the parties against whom the allegations have been made (unless the allegations relate to corruption, maladministration and serious waste or child abuse where legislation provides otherwise)
> informing the grievant and other relevant parties to the grievance of those involved in the handling of the grievance
> all parties to the grievance are informed of the procedures under which the grievance is being handled and are given a copy of the relevant policy and guidelines
> all parties to the grievance are heard and those who have had complaints made against them are given an opportunity to respond. All relevant submissions and any mitigating factors are given proper consideration before any conclusions are reached or any action is taken
> all parties to the grievance should be advised that if the grievance is of such a serious nature that disciplinary action may result, then the facts revealed during an investigation into the grievance may be used in any subsequent disciplinary proceedings
> the investigator and/or decision maker acts impartially, which means they must exclude themselves if there is any bias or conflict of interest.
This usually requires that the person bringing up the grievance (the grievant) must be willing to be identified, unless the facts of the matter are not in dispute or the matter involves allegations of corruption, maladministration or serious waste or child abuse. If in doubt about the requirements of procedural fairness, advice should be sought from the Human Resources or Equity and Diversity Units. A good guide is to consider how, in the circumstances, you would wish to be treated.

As mentioned above, on any occasion when the grievance is to be discussed, staff (both grievant and/or respondent) may choose to be accompanied by a representative of their choice. When handling a grievance you should ensure staff are aware of this option.

Confidentiality
Staff should usually be able to raise a matter, and receive initial advice, in confidence. It is not usually appropriate to disclose the identity of a staff member raising a grievance without first obtaining the staff member’s consent. However, all parties should be aware that the University will not act on an anonymous grievance, and procedural fairness will in most instances require that the staff member raising the grievance must be identified (refer to the section on procedural fairness above).

One possible exception may be where the facts of the matter are not in dispute, eg if a staff member objects to the behaviour of a colleague and the colleague admits the behaviour. Other exceptions are disclosures by staff about corruption, maladministration and serious waste or reportable conduct and allegations involving children. In such cases, information that identifies the staff member making the disclosure should not be released unless:

- the staff member consents in writing to the disclosure of that information
- it is in the interests of natural justice to do so or
- it is in the public interest to do so, for example, to effectively investigate the matter.

Staff members should not be required to respond to allegations made in unsigned letters, anonymous e-mails etc.

In order to maintain confidentiality, a staff member investigating a grievance should not discuss the grievance with others not legitimately involved in resolving the grievance. A breach of confidentiality relating to a grievance may represent misconduct and be subject to disciplinary action.

Victimisation
When handling a grievance you should be aware of the possibility of subsequent victimisation of any of the parties. Fear of victimisation may prevent staff from raising a grievance in the first instance. You should ensure that steps are taken to prevent victimisation from occurring. This includes advising all parties to the grievance that victimisation of any individual/s arising from the grievance will not be tolerated and that disciplinary action will result if victimisation is demonstrated to have occurred.

Vexatious or malicious complaints
While the great majority of staff grievances are motivated by genuine concern about perceived inappropriate or unfair behaviour or actions, on some occasions a grievance may be vexatious or malicious, ie designed to harass or annoy, to cause delay or detriment, or for any other wrongful purpose.

Staff should be made aware that if a grievance is investigated and found to be vexatious or malicious, then disciplinary action may result. Staff who believe they are the subject of a vexatious or malicious grievance can seek advice on their options from a person in authority in the area in which the grievance has been raised, one of the specialist complaint handling units mentioned previously or their supervisor.

Unsubstantiated complaints
It is in the interests of all parties that you are clear to the staff member raising a grievance that if a grievance is investigated to its full extent and cannot be substantiated, no further action will be taken. The staff member may then exercise the option of referring their grievance to a more senior person or an external body.
Counter complaints
In some circumstances, a grievance may lead to other, or counter, allegations. It is important that the initial grievance should be considered and resolution sought on the matter in its own right, and that the resolution process should not be confused with counter-accusations.

WHEN SHOULD I REFER A GRIEVANCE ON OR SEEK ADVICE?

Uncertain about how to deal with the grievance
If you are uncertain how to deal with the grievance you can approach a specialist unit, as appropriate, or the Human Resources Unit for advice.

Inappropriate area of responsibility or level of authority
If the grievance does not relate to your area of responsibility you may advise the staff member where the grievance might better be directed. Also, if the grievance has been raised initially at an inappropriate level of authority, you may refer the matter to someone at the appropriate level. However, you should not ask another person to take over the handling of a grievance without first obtaining the staff member’s consent.

Equity-related grievances
An equity-related grievance is when a staff member believes they are being discriminated against or harassed at work because of their sex (including pregnancy), sexual preference, transgender status, race, colour, ethnic or ethno-religious background, descent or national identity, social origin, marital status, family or carer responsibilities, disability, HIV status or other irrelevant medical record, age, trade union activity, political conviction or religious belief. Because of the specialist skills involved in identifying some forms of indirect discrimination and harassment, when handling equity-related grievances or grievances with a significant equity dimension, you must seek advice and assistance from the Equity and Diversity Unit on legislation and policy requirements. Usually, you will continue to handle the grievance with advice and assistance from the Equity and Diversity Unit. Because of the sensitive nature of some equity-related grievances, you should be aware that some grievance resolution options may not be appropriate, e.g., mediation of discrimination/harassment grievances is not usually an option until the outcome of any investigations is known.

Grievances which may lead to disciplinary action
Where grievances involve allegations of behaviour by staff members which may lead to disciplinary action being taken against the staff member/s, you must seek advice from the Human Resources Unit. As with equity-related grievances, you will usually continue to handle the grievance with assistance from the Human Resources Unit.

Grievances alleging corruption, maladministration or serious waste
These types of grievances must be referred to the Director, Internal Audit who will instigate an investigation of such allegations. The Reporting Corruption, Maladministration and Serious Waste policy and guidelines provide further information to supervisors on how to manage disclosures about such matters.

Grievances alleging reportable conduct, allegations or convictions involving children/young persons
You need to be aware that UTS has specific obligations in relation to grievances alleging reportable conduct and convictions involving children or young persons (anyone under the age of 18 years). The University is required to investigate such complaints and notify the Office of the State Ombudsman, even if the staff member raising the matter or child/young person in question does not wish further action to be taken. "Reportable conduct" is defined in the Ombudsman Act as:

> any sexual offence or sexual misconduct committed against, with or in the presence of a child (including child pornography offence), or

> any assault, ill treatment or neglect of a child/or
> any behaviour that causes psychological harm to a child, whether or not the child consented.

If you receive a grievance relating to allegation of reportable conduct against children or young persons you should immediately notify the Human Resources Unit.

**When and how do I investigate a grievance?**
If a grievance involves allegations about the behaviour of another person/s you must take steps to investigate the allegations unless the person/s admits the behaviour.

Steps in the investigation process:

> clarify and document the details of the grievance with the staff member (grievant), including exact times and dates of any incidents involved if possible. Request the staff member to produce any relevant documentation or advise if there were any witnesses to the incident he/she is complaining about. Ask the staff member their preferred resolution option, although it is important to make it clear that this may not be a possible outcome. If a staff member raises an issue but is not willing to proceed with the grievance then she/he should be advised that because of the requirements of procedural fairness, in most circumstances no further action can be taken by the University

> interview the respondent/s to the grievance, offering them the choice of being accompanied by a representative of their choice, outlining the specific allegations that have been made about them and giving them the opportunity to make a full response

> interview any witnesses and ask for a full account of the incident/s they observed. In order not to breach confidentiality, do not tell a witness any more than they already know, and make sure they are aware that the matter is confidential and should not be discussed with others

> consider all relevant evidence (and no irrelevant information) in the investigation process. In some cases you may determine that there is insufficient evidence to pursue the matter further at this stage

> maintain documentation of all steps taken to resolve the complaint

> having spoken to all parties to the complaint and having reviewed any relevant documentation, you may need to make a judgement about whether, on the balance of probability, the behaviour which is the basis of the complaint did or didn't happen. In the course of undertaking the investigation, you may also need to consider:

> the notion of “reasonableness” - would a reasonable person have found the behaviour inappropriate or offensive in the circumstances?

> if the respondent admits to the behaviour which was the basis of the grievance, and the behaviour is deemed to be inappropriate in the circumstances, the respondent should be asked to identify any mitigating circumstances that might have affected his/her behaviour.

**What are the possible outcomes of the grievance resolution process?**
The outcome of the grievance resolution process should be in keeping with the seriousness of the grievance and should be fairly and consistently applied across the University.

Some of the possible outcomes of a staff grievance include:

> after receiving advice and support the staff member addresses the matter directly with the person concerned

> through the process of resolution the staff member gains a better understanding of the situation so that his/her concerns are addressed

> the staff member receives an apology, or the issue or behaviour that was the basis of the grievance is modified
> a mutually acceptable resolution to all those involved is reached through alternative dispute resolution (ADR) processes such as mediation. It should be noted that ADR processes should only be considered if all parties to the grievance are willing to proceed with them and there is sufficient common ground between the parties to ensure that there is some prospect of a positive outcome. Human Resources or Equity and Diversity Units should be consulted if ADR processes are being considered. ADR processes are not usually appropriate for grievances relating to unlawful behaviour, where disciplinary action may result, or for equity-related grievances

> in some cases, the grievance cannot be substantiated and no further action results. The staff member raising the grievance and any other parties involved should be advised in writing that no further action will be taken in relation to the grievance. When a grievance is not substantiated, the resolution process should be sensitive to the preferences of those against whom complaints or allegations may have been made (for example, they may request other parties be advised that the grievance has not been substantiated)

> if the staff member is unsatisfied with the outcome, you should advise the staff member that she/he can pursue the grievance through other appropriate internal or external processes. Internally, the options may be the next level of management up to the Vice-Chancellor. Externally, the options include the NSW Anti-Discrimination Board, (see the Board’s website www.lawlink.nsw.gov.au/adb.nsf/pages/fairgoindex), the Human Rights and Equal Opportunity Commission for discrimination/harassment complaints (see the Commission’s website www.hreoc.gov.au/complaints_information/index.html), or the NSW Ombudsman for complaints relating to administrative decisions (see the NSW Ombudsman’s website www.nswombudsman.nsw.gov.au/complaints/index.html).

> in more serious cases, the University's formal disciplinary processes will be invoked. Any disciplinary action will be undertaken in accordance with the processes prescribed in the relevant industrial agreements (for staff) or the University’s Rules (for students). Consideration must be given to any mitigating circumstances before disciplinary action is taken. Formal warnings about inappropriate behaviour are a common outcome in the first instance, unless the behaviour is of a very serious nature (for example, involving repeated incidents of inappropriate behaviour or serious breaches of the University’s Code of Conduct). The most serious breaches may result in expulsion (for students) or dismissal (for staff).

> where allegations of abuse against children or young persons are proven and disciplinary action is taken, the Commission for Children and Young People must be formally notified and the staff member advised in writing of the notification.

Who is responsible for advising the staff member of the outcome of his/her grievance?
When you are handling a grievance you should monitor the outcome and ensure the staff member receives written advice of the outcome of the grievance and any action taken in response to the issues or concerns he/she identified. The University’s response to a staff grievance should be comprehensive, and should address all aspects of the grievance. It is not always possible to achieve a satisfactory outcome from the staff member’s perspective, but it should be clear that all aspects of the grievance have been investigated and responded to.

WHAT DOCUMENTATION SHOULD BE KEPT IN RELATION TO A GRIEVANCE?
Written material should be kept strictly confidential and should not be shown to anyone who is not directly involved in handling the grievance. Additional copies of grievance documentation should be kept to the essential minimum.

Care should be taken in the wording of written material, as absolute confidentiality cannot be guaranteed - disclosure can sometimes be compelled under Freedom of Information processes. With serious grievances involving unlawful behaviour or industrial grievances leading to disciplinary action, external agencies may become involved. In such cases, documentation and record keeping need to pass the scrutiny of these agencies. In addition, when the grievance relates to an allegation of unlawful behaviour such as discrimination or harassment, files and case notes must be detailed and should be retained in the event of subsequent proceedings under anti-discrimination law. Such records may form the basis for a defence
against a vicarious liability claim on the grounds that the University took “all reasonable steps” to deal with the problem.

If a staff member raises a grievance informally or verbally that includes allegations against a particular individual or group, and then withdraws the grievance or cannot be persuaded to proceed with the grievance because of concern about victimisation, particular care must be taken in record-keeping in such instances to ensure procedural fairness. It is inappropriate for managers or specialist units to keep potentially damaging records containing unsubstantiated allegations against an individual, particularly if the individual has no knowledge that the record exists and has not had the opportunity to refute it. In such cases, the name of the person/s against whom the grievance is made should not be recorded, but the particular department or area where the incident occurred should be noted for monitoring purposes.

Formal outcomes, e.g. disciplinary matters, should be documented on the relevant human resources/student files. Any material lodged on human resources/student files must comply with the guidelines on staff records (please refer to the Human Resources Manual) and the policy on the Privacy of Student Records (see UTS Calendar).

Approvals

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<th>EFFECTIVE DATE</th>
<th>17 August 2006</th>
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<tr>
<td>REVIEW DATE</td>
<td>Late 2006 in the context of the “Handling Complaints at UTS” project</td>
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<tr>
<td>ACCOUNTABLE OFFICER</td>
<td>Director, Human Resources Unit / Director, Equity and Diversity Unit</td>
</tr>
<tr>
<td>CURRENT INCUMBENT</td>
<td>Jennifer Gilmore / AnneMaree Payne</td>
</tr>
<tr>
<td>IMPLEMENTATION OFFICER</td>
<td>Senior Workplace Relations &amp; Policy Specialist, HRU</td>
</tr>
<tr>
<td>CURRENT INCUMBENT</td>
<td>Lisa Carroli</td>
</tr>
<tr>
<td>CONTACT NO</td>
<td>Extension 1079</td>
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### Revision/modification history

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<th>Date</th>
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<th>Current title</th>
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<td>16/08/06</td>
<td>1</td>
<td>6.13 Handling Staff Grievances – Guidelines for Supervisors</td>
<td>Process for dealing with grievances has been removed from collective agreements so process has been described within the policy (approved by Council - COU/06/082) and guidelines.</td>
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Staff member raises grievance at lowest appropriate level of management or to a specialist unit

Grievance handler determines the nature of the grievance and the wishes of the grievant with respect to resolution

Is the grievance alleging unlawful behaviour?

no

Are the facts of the grievance in dispute?

no

Investigate the facts of the grievance according to UTS principles and processes

yes

Can the grievance be substantiated?

no

Maintain confidential record of the investigation and its outcomes, advise all parties of results in writing. Records kept in appropriate specialist unit

yes

Maintain confidential record of the investigation and its outcomes, advise all parties of results in writing and implement resolution outcomes as appropriate, including formal disciplinary processes and notification to external agencies. All documentation to be kept in the Human Resources Unit or specialist unit, as appropriate